In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. Nos.33957-59 of 2007 &
Criminal Misc. Nos.91966-68 of 2007 &
Criminal Misc. No.16450-M of 2007

.....

Date of decision:29.10.2007

Harmanbir Singh

.....Petitioner

v.

State of Punjab

.....Respondent

....

Present: Mr. R.S. Cheema, Senior Advocate with Mr. K.S. Nalwa, Advocate for the petitioner.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab for the respondent-State.

Mr. Vikram K. Chaudhri, Advocate for the complainant.

.....

S.S. Saron, J. (Oral)

Cr. Misc. Nos.33957-59/2007:

Notice of the criminal miscellaneous.

Mr. I.P.S. Sidhu, learned Senior Deputy Advocate General, Punjab and Mr. Vikram K. Chaudhri, Advocate for the complainant accept notice.

The additional facts and documents (Annexures-P.7 to P.12) are taken on record subject to just exceptions.

The criminal miscellaneous stands disposed of.

Cr. Misc. Nos.91966-68/2007:

Notice of the criminal miscellaneous.

Mr. I.P.S. Sidhu, learned Senior Deputy Advocate General,

Punjab and Mr. Vikram K. Chaudhri, Advocate for the complainant accept notice.

The reply by way of affidavit of the petitioner to the affidavit of SI Bikramjit Singh, SHO, Police Station Beas along with Annexures-P.13 to P.23 attached with the reply are taken on record subject to just exceptions.

The criminal miscellaneous stands disposed of.

Cr. M. No.16450-M/2007:

Heard learned counsel for the parties at length.

The petitioner Harmanbir Singh is Superintendent of Police, Traffic, Punjab. By way of the present petition under Section 438 of the Code of Criminal Procedure (`Cr.P.C.' - for short) the petitioner prays for a direction to the arresting officer to forthwith release him on bail in the event of his arrest in case FIR No.21 dated 29.1.2007 (Annexure-P.1) registered at Police Station Beas, Police District Majitha, District Amritsar for the offences under Sections 302, 427, 148 and 149 Indian Penal Code (`IPC' – for short) and Sections 25 and 27 of the Arms Act, 1959.

The FIR dated 29.1.2007 (Annexure-P.1) has been registered on the statement of Jagir Singh, member, Shiromani Gurdwara Parbandhak Committee (`SGPC' – for short). The complainant alleges that his nephew Manjinder Singh Kang was a candidate of the Shiromani Akali Dal (Badal) (`SAD-B' – for short) for the Assembly elections from the Beas constituency. In connection with the elections many persons from the side of the SAD-B were going from Beas to Rayya. Balkar Singh, Jarnail Singh and Harjinder Singh were going in a Bolero vehicle. Dilbagh Singh (deceased) was going on a motorcycle. Many other persons, out of which

some were on motorcycles and other vehicles, were accompanying them. At about 1.00 p.m. when the persons from the complainant side reached in front of the office of the Congress party candidate, namely, Jasbir Singh alias Dimpa-the brother of the petitioner was present and armed with a pistol, Harbhinderdeep Singh alias Rajan (non-petitioner) was armed with a pistol. The petitioner, the Congress party candidate Jasbir Singh alias Dimpa and Harbhinderdeep Singh alias Rajan are brothers being the sons of Sant Singh. The petitioner was also present and armed with a revolver. The other persons, who were there from the side of the petitioner were Balkar Singh armed with double barrel gun, Varinder Singh alias Vicky armed with double barrel gun, Jaswant Singh armed with pistol, Kashmir Singh armed with double barrel gun, Shamsher Singh armed with pistol and Sarabjeet Singh armed with a pistol. They came out from the office of the Congress party candidate Jasbir Singh alias Dimpa and started hurling abuses at the persons who were passing by and were members of the SAD-B. Jasbir Singh alias Dimpa fired a shot with his pistol which hit Dilbagh Singh on his back while he was going on his motorcycle. He died at the spot. This caused panic amongst the persons from the complainant side. The complainant Jagir Singh suspected that other persons from his side had also received fire arm injuries. The shots that were fired by the petitioner's side also hit a tractor owned by the complainant. The complainant side then ran away leaving their vehicles which were also damaged. Thereafter, the Police reached the spot and the complainant Jagir Singh gave his statement to Malkit Singh SI/SHO, Police Station, Beas. In terms of the statement

made by the complainant Jagir Singh the FIR has been registered.

Shri R.S. Cheema, Senior Advocate appearing with Shri K.S. Nalwa, Advocate for the petitioner has contended that the petitioner was not present at the time of occurrence as he was at Chandigarh. It is also submitted that the investigating agency has gone out of the way to involve and implicate the petitioner as he happens to be the brother of the accused Jasbir Singh alias Dimpa, who was the candidate of the Congress party. A reference has been made to the statement of Jagir Singh-complainant which was recorded on 29.1.2007 and the subsequent statement recorded on 3.2.2007. In the subsequent statement the petitioner is not even named as an accused. Similar is the position with regard to the statement of other witnesses i.e. of Balkar Singh, Harjinder Singh and Jarnail Singh. It is also contended that some other witnesses, namely, Kuldip Singh, Gurmukh Singh, Ajmer Singh, Jasbir Singh son of Shingara Singh and Jasbir Singh son of Santokh Singh whose statements were recorded had not even named the petitioner as an accused. It is also contended that the prosecution recorded the statement of Deepinder Singh on 30.1.2007 in which he had submitted a compact disc (CD) relating to the occurrence as a piece of evidence. Thereafter, the supplementary statement of aforesaid Deepinder Singh was recorded on 21.4.2007 in which it is stated by him (Deepinder Singh) that he had forgotten to get recorded in his statement that the accused in the case who were firing were Jaimal Singh, Chattar Singh, Constable Parveen Kumar, Kashmir Singh, Sant Pal Singh, Surjit Singh and Gurbhej Singh. On the strength of the same, it is contended that the petitioner is not even alleged to be one of the accused who were firing at the

persons of the complainant side. Besides, Gurbhej Singh, who is shown to be firing has been granted the concession of pre-arrest bail by the Supreme Court vide order dated 6.8.2007 passed in Criminal Appeal No.1043 of 2007 arising out of the SLP (Cr.) No.1850 of 2007. It is submitted that the petitioner at the time of occurrence was present with the Inspector General of Police (Traffic), Punjab in connection with a meeting. He has placed reliance on the travelling allowance and inquiry register (Annexure-P.3) in which the private vehicle of the petitioner is shown as entered in the office precincts of Director General of Police, Punjab at 12.35 p.m.

In response, Mr. I.P.S. Sidhu, learned Senior Deputy Advocate General, Punjab and Mr. Vikram K. Chaudhri, Advocate learned counsel appearing for the complainant have strongly opposed the application for pre-arrest bail. It is submitted that the petitioner is, in fact, the main conspirator in the case and the role attributed to him is clearly made out from the statements of Sakattar Singh and Gurmej Singh recorded on 7.5.2007. It is strongly contended that the plea of alibi that has been taken by the petitioner is absolutely false, inasmuch as, it has come on record in the statement of the petitioner during investigation that the alleged meeting that was held with the Inspector General of Police (Traffic) was held at 12.00 noon and, therefore, the entry of the car in the precincts of the office of DGP, Punjab at 12.35 p.m. shows the hollowness of the claim of the petitioner. Besides, it is submitted that no agenda for the alleged meeting of the Inspector General of Police has been placed on record which, according to the learned counsel for the State, shows the involvement of the senior

police officers in shielding the petitioner. Strong reliance has also been placed on the notification dated 8.2.2007 issued by the Election Commission of India in which the role of the petitioner has been adversely commented upon. It is also submitted that the actual role and even the conduct of the petitioner do not entitle him to the concession of pre-arrest bail. The petitioner, it is submitted, has tried to overawe the prosecution witnesses and also raised a false plea of alibi.

I have given my thoughtful consideration to the contentions of the learned counsel appearing for the parties and also perused the record. It may be noticed that in the initial complaint of Jagir Singh-complainant recorded on 29.1.2007 on the basis of which FIR (Annexure-P.1) has been registered it has been alleged that the petitioner was present at the spot and was armed with a revolver. It is also alleged that he had fired with the revolver along with his other co-accused. However, in the supplementary statement of Jagir Singh complainant recorded on 3.2.2007 it is mentioned that the petitioner was not present at the spot.

Learned counsel appearing for the State and the complainant have submitted that the said subsequent statement is tainted as the investigation was being carried in a perfunctory manner because initially the Police was out to help the accused. It is submitted that later on account of the change in Government that proper investigation in the case has been carried out and the persons who were actually involved have been booked.

Mr. Cheema, learned senior counsel has, however, pointed out that the prosecution takes advantage of whatever statement that suits them at

any time. He has made a reference to the order dated 21.8.2007 passed by this Court in Criminal Misc. No.39418-M of 2007 wherein the State counsel and the counsel for the complainant had placed strong reliance on the supplementary statement of complainant-Jagir Singh recorded on 3.2.2007. The said order was passed while granting regular bail to Constable Pawan Kumar, Constable Kashmir Singh and Constable Jaspal Singh.

Be that as it may, it is not in dispute that in the supplementary statement recorded on 3.2.2007 of Jagir Singh, the petitioner is not shown to be involved in the case. Besides, in the initial statement recorded on 29.1.2007 (Annexure-P.1), the petitioner is stated to have fired. However, the shots fired from his revolver are not shown to have hit any person. Gurbhej Singh, who was one of the persons who had fired with his gun and was declined pre-arrest bail by this Court, filed SLP (Cr.) No.1850 of 2007 and Leave to Appeal was granted in the said case vide order dated 6.8.2007 by the Hon'ble Supreme Court of India. Vide order dated 6.8.2007 passed in Criminal Appeal No.1043 of 2007, the Hon'ble Supreme Court directed that the said appellant Gurbhej Singh in the event of his arrest shall be released on bail on his furnishing bail bond for a sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the arresting authority or the Court concerned as the case may be subject to the conditions laid down under sub-section (2) of Section 438 Cr.P.C. With the said observations, the appeal was disposed of. It may also be noticed that another co-accused, namely, Chattar Singh, who was also alleged to be one of the persons who had fired during the occurrence but had not caused any

injury to any person has been granted the concession of pre-arrest bail by this Court vide order dated 5.9.2007 passed in Criminal Misc. No.18424-M of 2007.

The contentions on which considerable emphasis has been raised by the learned counsel for the State and the learned counsel for the complainant are that a false plea of alibi has been raised. In my view, this Court at the stage of consideration of pre-arrest bail is not to go into this aspect. The contention is based primarily on the fact that the private car of the petitioner is stated to have entered the precincts of the office of DGP at 12.35 p.m. whereas the meeting that was held with the Inspector General of Police (Traffic), it is stated by the petitioner, was held at 12.00 noon. Moreover, it is submitted that there was no agenda for the meeting. This aspect need not to be gone into at this stage as the matter is still under investigation. Admittedly, the Inspector General of Police (Traffic) with whom the meeting is stated to have been held has not been examined till date. Therefore, it would be improper to comment on the same one way or the other lest it may prejudice the case of either side. It is suffice to mention that the variation in the time of the meeting and the car of the petitioner being entered in the precincts of the office of DGP, Punjab may not be such a circumstance which can by itself be held to say that the petitioner was present at the time of occurrence.

The reliance placed on the notification dated 8.2.2007 of the Election Commission of India is also not to be gone into and considered at this stage. In any case, from the perusal of the same it cannot be said that

the petitioner was present at the time of occurrence. The following observations in the notification dated 8.2.2007 of the Election Commission of India are apposite:-

> "One of the persons named as accused is Harmanbir Singh @ Tinka who is working as SP/Traffic at Chandigarh. It is reported that he had applied two days station leave i.e. 20 and 21.1.2007 and casual leave for 4 days 22.1.2007 to 25.1.2007 and subsequently 26/27/28/1/2007 were gazetted holidays. It is also reported that he was at his residence at Rayya till 28.1.2007. He left for Chandigarh on 29.1.2007. It is also reported that instructions have been issued that Harmanbir Singh should not be permitted to leave the HQ Chandigarh till the completion of election process.
>
> xx xx xx xx xx
>
> Dimpa is sitting MLA of ruling party and an influential member and considered close to top echelons of his party and government. Dimpa's brother is SP Traffic in Chandigarh and complaints, including written complaints were given much before 29th January, 2007 by MS Kang, the rival candidate, about his presence in the constituency. In fact SP Traffic had been given leave for a few days and was there in the constituency till 28th January, 2007. DGP reported that SP Traffic was not there on 29th January, 2007 when the incident took place.

xx xx xx xx xx

In spite of the number of complaints received from Shri Manjinder Singh Kang, regarding alleged role of Shri Harmanbir Singh @ Tinka working as SP, Traffic in Chandigarh, leave/permission including station leave permission had been granted to Shri Harmanbir Singh and he was reported to be at his residence in Rayya (in immediate proximity of Beas) and left for Chandigarh on 29.1.2007 at 8.00 A.M. (incident took place on 29.1.2007)."

The said observations were inter alia recorded for the purpose of postponing the assembly elections to the Beas Assembly Constituency. It may be noticed that the elections for the Punjab Vidhan Sabha were held on 13.2.2007. However, the elections of the Beas Assembly constituency were postponed to 11.3.2007 due to the unfortunate incident in the present case. The notification dated 8.2.2007 is not subject matter of judicial scrutiny in the present case. It is submitted that the same is part of the challan that has been filed by the Police. The same is also, therefore, to be considered and gone into after evidence has been led by the parties. As such, it would be inappropriate at this stage to comment one way or the other and to hold that the petitioner was indeed present at the time of occurrence when the incident took place.

The statements of Sakattar Singh and Gurmej Singh recorded on 7.5.2007 are to the effect that they along with other accused were sitting and talking about the elections on 20.1.2007. The petitioner arrived there in

a nervous condition and he stated that the wave of election was against them and Akalis have prevailed upon. He further stated that Akalis are going to raise slogans against them and in case they stage any dharna, then they should be killed. The petitioner further said that they should create such a terror that they should run away. The petitioner directed to arrange as many arms and ammunitions as possible apart from brickbats in the office premises as well as on the roof top. The petitioner further stated that in case shots are required to be fired then they should go ahead and he would himself control everything including the police and would also replenish the cartridges. He further directed while assigning duties to each and every person sitting there to bring as many persons as possible. The statements of Sakattar Singh and Gurmej Singh were recorded on 7.5.2007 with regard to their talk which was being held on 20.1.2007. The incident in the present case took place on 29.1.2007. Therefore, at this stage, the question whether the petitioner is involved in terms of the offence under Section 120-B IPC would be premature.

Learned senior counsel for the petitioner has submitted that, in fact, Section 120-B IPC has been added in the challan with reference to and in the context of Section 201 IPC and is not in the context of Section 302 IPC. This aspect would also require consideration by the trial Court at the appropriate stage. The fact, however, is that in terms of the challan (Annexure-P.9) filed by the Police against the co-accused it has been inter alia mentioned that the accused after using the weapon in the occurrence had cleaned the same and replenished the used cartridges and after the use

of arms and ammunition they had deposited the same with various dealers. As such, the offence under Sections 201/120-B IPC was added. The said adding of the offence at the said stage according to the learned senior counsel for the petitioner would show that it is in the context of Section 201 IPC only. However, this aspect is also to be gone into by the learned trial Court at the appropriate stage. Besides, it may be noticed that the case of the petitioner's side is that in fact Smt. Balbir Kaur Sarpanch of Baba Bakala who was the supporter of the Congress Party was kidnapped on 28.1.2007. In that regard case FIR No.20 dated 28.1.2007 was registered at Police Station Beas on the complaint of Tarlochan Singh Numberdar, for the offences under Sections 364 and 34 IPC. In the said complaint, there were serious allegations against Manjinder Singh Kang-the SAD-B candidate. One Sarabjit Singh Sandhu was named as a suspect in the said case was arrested by the Beas Police. His arrest was opposed by the complainant side in the present case. With a view to protest against his arrest, the SAD-B on 29.1.2007 gave a call to Gherao the Police Station. A strong mob had collected and had Gheraoed the Police Station Beas. The Beas Police succumbed to the political pressure particularly due to election fever and released the suspect – Sarabjit Singh Sandhu. Thereafter, a procession was taken out by the Akali workers of SAD-B who were already in a belligerent mood and were armed. They raised slogans against the Congress Party and abused their workers. They also resorted to pelting stones towards the election office of Jasbir Singh alias Dimpa – the Congress Party candidate. The said mob turned into an unlawful assembly and started picketing the

election office of the Congress Party. It is at this stage that Dilbagh Singh who was a part of the Akali mob sustained fire arm injury on his back, as a result of which he died. Therefore, the FIR has been registered and Jasbir Singh alias Dimpa is named as the main accused.

Learned counsel for the complainant has also contended that the petitioner had replenished the used cartridges which is evident from the supplementary statements of Kulwinder Singh, Parveen Kumar and Amarjit Singh. A perusal of the statements of Constable Kulwinder Singh, Constable Parveen Kumar and HC Amarjit Singh recorded on 24.3.2007 show that they were informed that the barrel of their respective assault guns had been got washed with hot water, besides, the cartridges used at the time of the occurrence had been replenished by the petitioner. This fact, however, is not mentioned in the initial statements of the said witnesses that were recorded on 30.1.2007. Therefore, the fact whether the petitioner had replenished the cartridges or not is also not to be gone into at this stage.

Learned counsel for the State and the complainant have also placed reliance on the calendar of events (calendra) dated 18.6.2007 filed by the Police against Balkar Singh son of Ajit Singh, an accused in the case. The said calendra has been filed under Sections 186 and 189 IPC. On the strength of the same, it is contended that the petitioner had tried to interfere in the investigation of the case. However, it may be noticed that the said calendra is not against the petitioner and is only against Balkar Singh. Therefore, it is not of much significance and no reliance can be placed on the said calendra at this stage.

In the aforesaid facts and circumstances, it may be noticed that the petitioner even if it is taken that he had participated in the actual occurrence that took place on 29.1.2007, the shots with the revolver that are alleged to be fired by him are not shown to have hit any person. The plea of alibi if raised is to be considered and gone into after evidence has been led in the trial. However, keeping in view the fact that the other accused, namely, Gurbhej Singh and Chattar Singh, who were present at the time of occurrence and had fired with their firearms but the shots did not hit any one have been granted the concession of bail, the petitioner would also be entitled to the concession of bail.

In the circumstances, the interim bail granted on 16.3.2007 is made absolute and the petitioner in the event of his arrest shall be released on bail on his furnishing bail bond for a sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the arresting authority or the Court as the case may be and subject to the conditions laid down in Section 438 Cr.P.C.

The criminal miscellaneous petition is accordingly disposed of.

October 29, 2007. **(S.S. Saron)**
Judge

hsp